IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CIVIL REVISION APPLICATION NO. 535 OF 2007

Kamalabai Maruti Dhanave & Ors. ... Applicants

(Orig. Defendants)

Versus

Dattatray Gokuldas Devi ... Respondent

(Orig. Plaintiff)

Mr.G.S.Godbole,Advocate Advocate, for the the appellant.

Mr.S.S.Shah,Advocate, for the respondent.

CORAM: J.H.BHATIA,J.

P.C.

1. Heard learned Counsel for the paries.

2. The applicants before this Court are the heirs of the original defendant-tenant and the respondent is the plaitiff-landlord. The defendant was the tenant of the plaintiff in respect of the suit property situated at Karmala. The agreed rent was Rs.12.50 per month. According to the plaintiff, since 1.1.1979, the defendant had not paid the rent and is defaulter due to failure topay rent. On 23.2.1982, the plaintiff issued a notice tothe defendant demanding rent. On 11.1.1989,

he filed a suit for eviction. In the said suit, he also sought recovery of rent for three years prior to the filing of the suit. Issues were framed in 1993. The defendant deposited some amount of rent during the years 1990, 1991 and 1992. That payment was made for the period from 1.1.1986 onwards. Thus, it covered only a part of the arrears of rent. In 1997, the defendant deposited the arrears of rent from 1.1.1979 to 31.12.1985. The trial Court dismissed the suit holding that the arrears of rent which were recoverable under the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as " the Bombay Rent Act") were deposited on or before the first date of hearing and, therefore, he was protected under Sectiion 12(3) of the Bombay Rent Act.

2. Against dismissal of the suit for eviction, the landlord prefererd Regular Civil Appeal No.394 of 1997. After hearing the parties and after referring to certain authorities of this Court as well as the Supreme Court, the learned appellate court held that under Section 12(3) of the Bombay Rent Act, protection is gien to the tenant against evictiion if on the first date of hearing of the suit or on or before such other date as theCourt may fix the tenant pays or tenders in Court the standard rent or permitted increases then together with simple interest on the amount of arrears of rent and permitted

increases at 9% per annum. Howver, it was found that the arrears of rent included all the arrears of rent including those arrears of rent which could not be recovered by filing a suit sue to the provisioons of the Limitation Act. As the defendant has not paid all the arrears of rent and permitted increases with 9% interest on or before the first date of hearing of the suit, the defendant was not entitled to the protection against eviction under Section 12(3) of the Bombay Rent Act. With this finding, the appellate court allowed the appeal and decreed the suit for evictiion. In these circumstances, the widow of the defendant has preferred the present Civil Revision Application.

4. Mr. Godbole, learned Counsel for the revision-applicant-tenant vehemently contended that even though thepayment of arrears of rent priot to 1.196 was not made on the first date of hearing, the payment was actually made in 1997 and the acceptance of it indicates that the date was extended for payment. However, he could not point out any order passed by the trial Court extending teh date for payment of arrears of rent from the date of first hearing i.e. the date of framing of issues in the suit in 1993. Mr. Godbole tried to contend that the authorities as referred to bythe trial Court were under Sectiion 12(3)(b) prior to amendment of 1987. However, the words "rent then due" in Section

12(3)(b) were interpreted by the Courts. The amendment in Section 12(3) was only to provide that such arrears could be paid on the first date of hearing of the suit or on or before such other date as thecourt may fix. Further, by amendment, it was provided that the arrears of such standard rent and permitted increases should be depoosited along with interest at 9% per annum. There is no change as far as the words "rent then due" are concerned. Therefore, "the rent then due" should mean the rent which was in arrears, including that part of the rent, recovery of which was barred by limitation.

5. The learned Counsel for the respondent relied on two authorities of this Court under Sectiion 12(3) of the BombayRent Act. In S**hamshadbegum Unus Inamdar vs. Aminasaheb Bandgisaheb Mokashi, 2002 (4) Mh.L.J. 499**, the learned Single Judge of this Court, after referring to the authorities of the Supreme Court in the case of **Arjun Khiamal Makhijani vs. Jamnadas C. Tuliani and Ors. (1989) 4 SCC 612,** held that the deposit of arrears of rent has to be made on the first date of hearing of the suit or on or before such other date as the Court may fix by extending time to make such deposit. Their Lordships of the Supreme Court in **Arjun Khiamal Makhijani (cited supra)** observed as follows :-

"....The words "on or before such other date as

> the court may fix" occurring after the words: "on the first day of the hearing of the suit" in sub-sectiion (3) of section 12 of the Act were obviously meant to mean a situatiion where for some inevitable reason the necessary deposit could not be made on the day of the hearing of the suit and the court extended the time to make such deposit. A deposit made on or before such extended date sould also meet the requirement of the sub-section..."

The same view was taken in **Ashok Pandurang Kulkarni vs. Parshuram Narhar Joshi (2003) BCR 347.** In the present case, though the defendnat-tenant deposited the arrears of rent from 1979 to December,1985 in the year 1997, there is nothing on record toshow that the trial Court had extended the time to deposit the same beyond the first date of hearing in 1993. Therefore, merely because the defendant has eventually deposited the aount in 1997, it does not give him protection under Section 12(3) of the Bombay Rent Act. Taking into consideration this legal position, I do not find any illegality or irregularity commited in the impugned judgment passed by the appellate court while passing decree of eviction.

6. The learned Counsel for the applicant-tenant contended that some receipts were issued by landlord for

payment of rent even prior to 1985, but somehow old receipts were not traceable and could not be procducd before the trial Court as well as the appellatecourt and, therefore, they may be allowed to be produdced now. For this purpose, he referred Order 41 Rule 27 of C.P.C. The said provision would be applicable only in appeal and not in revision. I am not impressed with the contention that in the Revisioon, this Court should allow production of documents, which were in custody of the party but were not produced, by invoking the inherent powers of this Court under. Taking into consideration the circumstances, I find no substance in the Revision Application.

Therefore, the Revision stands dismissed.

7. At this stage, the learned Counsel for the applicants makes a request to continue the ad-interim relief against eviction which was granted in Writ Petition No.1424 of 2004, for a further period of eight weeks. The learned Counsel for the respondent has no objection subject to his filing a written undertaking not to create third party interest or not to cause damage to the property. Ad-interim relief to continue for a further period of eight weeks from this date subject to the applicants filing a written undertaking that the applicants shall not create third party

interest or cause damage to the property.

(J.H.BHATIA,J.)